



STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

TO: Members of the Assembly Judiciary and Ethics Committee
FROM: Representative Gary Hebl
RE: AB 387, relating to the bankruptcy and insolvency property exemptions
DATE: August 25, 2009

This bill updates Wisconsin's bankruptcy and insolvency statutes so that the exemption amounts for various forms of personal and business property reflect the property's present-day value. These exemption amounts were last adjusted in the late 1980's, and were effective in 1990. This bill will modernize Wisconsin's bankruptcy and insolvency law by bringing the allowable exemptions in line with inflation since 1990.

In general, bankruptcy and insolvency property exemptions, such as those addressed in this bill, allow debtors to retain the basic necessities of life so that their debt does not leave them so destitute that they become wards of the state. This bill allows an individual to retain the basic business equipment, personal property and mode of transportation necessary to start over after a bankruptcy.

These exemptions will help people who have a great deal of equity in their home and other property, mostly older individuals who have incurred an expected medical expense or other unforeseen loss of revenue, such as unemployment. These exemptions do not, by any means, allow individuals to spend recklessly and avoid the consequences.

This bill also eliminates what is known as the "marriage penalty" for the exemption provided for homesteads. Currently, homesteads are the only property exemption that cannot be claimed individually by each spouse. This creates a marriage penalty because other non-married couples who jointly own a home can both claim the exemption. This bill also adjusts the homestead exemption to the Consumer Price Index every three years.

With the high unemployment and tightened credit markets we are now experiencing, bankruptcy filings are already hitting new highs and could possibly get worse. Now is the time to prepare our state for the coming wave of bankruptcies so that Wisconsin has the tools to emerge successfully from this recession and its aftershocks.

Bankruptcy, Insolvency & Creditors Rights Section



State Bar of Wisconsin

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To: Assembly Judiciary and Ethics Committee

From: State Bar of Wisconsin

Bankruptcy, Insolvency & Creditors Rights Law Section

Date: August 25, 2009

Re: Assembly Bill 387

The State Bar of Wisconsin and the Bankruptcy, Insolvency & Creditors Rights Law Section within the State Bar support a variety of revisions to Wisconsin's exemptions statutes. We especially appreciate Representative Hebl and Senator Taylor's proposal that would make a number of increases in various property exemptions as well as eliminating the marriage penalty associated with the homestead exemption.

Exempt property is property that individuals can keep from execution (seizure) by judgment creditors or a bankruptcy trustee. Debtors are not allowed to exempt property from mortgages, voluntary security interests or statutory or tax liens, only the Debtor's equity in property is considered when applying the exemption.

Non-homestead exemptions were last revised in the late 1980s, at which time it was anticipated that the amount would be revisited to keep pace with inflation. That has not taken place.

Dollar amounts under the federal Bankruptcy Code exemptions are revisited every three years from changes in the consumer price index. Those were last adjusted in 2007.

The property exemptions changed under this legislation would include:

- increase business/farm property exemption from \$7,500 to \$15,000 and add a provision to exempt debtor's interest in a closely held business entity.
- increase consumer goods exemption from aggregate of \$5,000 to aggregate of \$12,000.
- increase motor vehicle exemption from \$1,200 to \$4,000.
- increase personal injury award exemption from \$25,000 to \$50,000 and clarify it is per claim.

All of the Wisconsin exemptions, but for the homestead exemption, can be doubled for a married couple. The homestead exemption cannot be doubled for a married couple, which creates a "marriage penalty". This penalty has lead to couples divorcing to be able to keep their home from a judgment creditor. AB 387 would eliminate the "marriage penalty" by allowing married couples to stack their homestead exemption.

State Bar of Wisconsin

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LEGAL Action
OF WISCONSIN

40 Years of Justice

TO: Assembly Committee on Judiciary and Ethics

FROM: Bob Andersen 

RE: AB 387, relating to homestead exemption and increases in the value of the exemption for various property that is exempt from execution.

DATE: August 25, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the priorities of the organization.

I. Purpose of Statutory Exemptions

As, s. 815.18 of the statutes describes, these *exemptions* are intended to *"advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to maintain life and the opportunity to avoid becoming public charges."*

II. Homestead Exemption

The homestead exemption for consumers who were sued to recover on a debt was initially \$25,000 in 1973. That amount was increased 13 years later to \$40,000. It has been stuck at \$40,000 for the 22 years that have elapsed since 1986.

For an indication of how prices have changed since 1986, we have the following data from the year 1986, from the website <http://www.thepeoplehistory.com/1986.html>:

Average Cost of new house \$89,430.00
 Average Income per year \$22,400.00
 Average Monthly Rent \$385.00
 Average Price for new car \$9,255.00
 1 gallon of gas 89 cents

If you have \$100 Converted from 1980 to 2005 it would be equivalent to \$243.45.

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The proposal in the bill to index the homestead exemption every three years to an increase in the consumer price index is a good way to safeguard against the value of the exemption falling behind in time, as it has in the past.

III. All Judgements Automatically Result in Liens on Homesteads

Judgments against consumers result in the automatic establishment of liens against homes. The low exemption that exists now creates several problems for consumers:

- First, of course, a low exemption means that many more homes are subject to be taken away from consumers. Having a home is not only important to a consumer. It is one of the national and state policies to promote home ownership and the loss of homes due to debts runs counter to this policy. Therefore the policies are promoted by having a more realistic exemption.
- Secondly, consumers worry that if they get judgment for a medical debt or a consumer debt, there will be an execution on their home. Because of this fear they are often intimidated from defending themselves in actions for debts owed. They often settle and pay more than they should.
- Medical debts in particular are so complicated, especially when Medicare, Medicaid, and supplemental insurance is supposed to be paying for the costs, that it is easy for mistakes to be made either by the providers or by the consumers in paying too much.
- This is often seen with elderly individuals or disabled children who are left the homes by their parents.
- Because they are so afraid of losing their homes, consumers settle debts, sometimes inaccurately, by making payments in lieu of paying for the bare necessities for living, like food, clothing, and heat.
- An increase in the exemption means that the consumer's home will be better protected in bankruptcy, because the state's exemption can be used. Bankruptcies continue to rise in Wisconsin.
- With the economic crisis that is occurring now, protections for homesteads becomes even more important because of the rapidly growing number of workers being laid off and being faced with bills they cannot pay.

IV. Automobile Exemption

The auto exemption of \$1200 was created in 1990. It has not changed since. The average cost of a new car in 1990 was \$16,000, according to the website

<http://www.thepeoplehistory.com/1990s.html>.

In considering what the exemption should be today, automobiles are a little different than other items of property. That is because of the critical utility that an automobile has for the purpose of accessing employment. Since, it is in the interest of creditors for debtors to have access to automobiles to continue to work and earn incomes that can be used to pay for the debts, it is arguable that an exemption should be created to protect one automobile, no matter what value. However, since that would result in an exemption for luxury automobiles, it is difficult to defend. Consequently, the \$4,000 value proposed by the bill is a reasonable improvement.

V. Consumer Goods, Including Household Furnishing, Appliances, Clothes, Jewelry, Sporting Goods and Firearms.

The exemption for consumer goods was last increased in 1990 to \$5,000. Before that it had been \$400 for all wearing apparel, jewelry and other articles of personal adornment; \$200 for all beds, bedding, stoves, cooking utensils, and household furniture; and \$50 for firearms.

The increases in prices over the past twenty years justifies the increase in the exemption proposed by the bill to \$12,000.

VI. Depository Accounts under s. 815.18 (3)(k) of the Statutes

This exemption has been unchanged since 1963. As a result of inflation, \$1000 in 1963 is worth \$7700 now. We would like to request that the committee consider increasing this from \$1000 to \$2000.